

## UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

GARY GIANNINI,

No. C 14-05227 LB

Plaintiff,

v.

CARPENTERS PENSION TRUST FUND  
FOR NORTHERN CALIFORNIA,**ORDER (1) DISCHARGING THE  
ORDER TO SHOW CAUSE, (2)  
GRANTING DEFENDANT'S MOTION  
TO DISMISS, AND (3) INFORMING  
PLAINTIFF OF THE LEGAL HELP  
CENTER**

Defendant.

[Re: ECF No. 5]

**INTRODUCTION**

Plaintiff Gary Giannini filed a breach of contract claim and a “failure to notify” claim against Defendant Carpenters Pension Trust Fund for Northern California (the “Fund”) in state court. The Fund removed the action to federal court, and now moves to dismiss Mr. Giannini’s claims, arguing that they are preempted under the Employee Retirement Income Security Act of 1974 (“ERISA”). (See Notice of Removal, ECF No. 1; Motion, ECF No. 5.<sup>1</sup>) Pursuant to Civil Local Rule 7-1(b), the court finds this matter suitable for determination without oral argument and vacates the February 12, 2015 hearing. For the reasons explained below, the court finds that the Fund has met its burden to show that the court has subject-matter jurisdiction over the action. And upon consideration of the papers submitted and the applicable legal authority, the court grants the Fund’s motion to dismiss.

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<sup>1</sup> Record citations are to documents in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

**STATEMENT**

On May 27, 2014, Mr. Giannini filed a complaint in Contra Costa County Superior Court against the Fund for breach of contract and “failure to notify.” (Complaint, ECF No. 1 at 8-9.) He seeks \$17,500. (*Id.* at 9.) His complaint refers to allegations made in an “attached declaration,” but none was attached. (*See id.*) His case management statement, however, makes clear that he has sued the Fund for “withholding of retirement funds due to lack of appropriate notice.” (Case Management Statement, ECF No. 1 at 10.)

On November 25, 2014, the Fund removed the action to this court, asserting federal question subject-matter jurisdiction. (Notice of Removal, ECF No. 1 at 2.) The Fund argues that federal question jurisdiction exists because Mr. Giannini’s claims are “completely preempted” by ERISA. (*Id.*) It says that “the gravamen of the Complaint[] is to seek benefits from a pension plan governed by” ERISA. (*Id.*)

Thereafter, on December 2, 2014, the Fund filed a motion to dismiss Mr. Giannini’s action because his claims are completely preempted by ERISA. (Motion, ECF No. 5.) Although Mr. Giannini was served with the motion, he failed to file an opposition to it within the deadline for doing so. Nevertheless, in light of Mr. Giannini’s pro se status, the court issued an order extending the deadline for him to file an opposition and making clear to him that if he did not file an opposition, he risked having the court grant the Fund’s motion and dismiss his action. (12/24/2014 Order, ECF No. 11.) Mr. Giannini then filed a opposition on January 8, 2015, which states (in the declaration attached to it) that he “was never informed hat [he] was supposed to send a copy of my [Social Security Disability Insurance] award letter to [the Fund] within 90 days of receiving it.” (Opposition, ECF No. 13 at 6.<sup>2</sup>) The Fund filed a reply to Mr. Giannini’s opposition on January 15, 2015. (Reply, ECF No. 15.)

Upon further review of the Fund’s notice of removal, it became clear that the Fund had not

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<sup>2</sup> Even though Mr. Giannini’s opposition was styled as a motion for summary judgment, it clearly was not, so the court issued an order construing it as an opposition to the Fund’s motion. (1/13/2015 Order, ECF No. 14.) In his opposition, Mr. Giannini also declares that he invokes the Seventh Amendment (right to a jury trial), but this is inapposite to the Fund’s ERISA preemption argument. (Opposition, ECF No. 13 at 6.)

adequately supported its assertion of federal question jurisdiction. Accordingly, on January 23, 2015, the court sua sponte ordered the Fund to show cause why the action should not be remanded back to state court. (OSC, ECF No. 16.<sup>3</sup>) The court ordered the Fund to provide a response in writing no later than January 30, 2015. (*Id.*) In response, the Fund filed the Declaration of Gene Price, Plan Administrator for the Fund, who stated that the Fund was established by, and is administered in accordance with, ERISA. (Price Decl., ¶ 3, ECF No. 17-1 at 2.) Mr. Price also attached a copy of the Plan and its Summary Plan Description, which also makes clear that the Plan is governed by ERISA. (*Id.*, Ex. 1, ECF No. 17-1 at 3-206.) He also attached a written appeal, dated December 20, 2012, from Mr. Giannini, in which Mr. Giannini says, “I am “appealing the denial of retroactive disability pension effective date, because I was unaware that the SSDI award had to be sent to C&H Welfare within 90 days. I called in August and October [and] no analysts told [me] to mail or fax it.” (*Id.*, Ex. 2, ECF No. 17-1 at 207-08.) He also attached the Fund’s February 7, 2013 written denial of Mr. Giannini’s appeal. (*Id.*, Ex. 3, ECF No. 17-1 at 209-10.)

## ANALYSIS

### I. LEGAL STANDARD

#### A. Rule 12(b)(6)

A court may dismiss a complaint under Federal Rule of Civil Procedure 12(b)(6) when it does not contain enough facts to state a claim to relief that is plausible on its face. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). “The plausibility standard is

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<sup>3</sup> If at any time before final judgment, it appears the court lacks subject-matter jurisdiction, the court may remand the case to state court either sua sponte or on motion of a party. *See* 28 U.S.C. 1447(c); *see, e.g., Cattarin v. Kraft Foods N.A., Inc. Tip Plan*, No. 09-CV-534A, 2009 WL 3459662, at \*2 (W.D.N.Y. Oct. 19, 2009) (court sua sponte raised the issue of whether it had subject-matter jurisdiction based on complete preemption under ERISA); *Chesters v. Welles-Snowden*, 444 F. Supp. 2d 342, 343 (D. Md. 2006) (same).. The party who invoked the federal court’s jurisdiction has the burden of establishing it. *See Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996); *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988) (citing *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921)).

1 not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant  
 2 has acted unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 557.). “While a complaint attacked by a  
 3 Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to  
 4 provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a  
 5 formulaic recitation of the elements of a cause of action will not do. Factual allegations must be  
 6 enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555 (internal  
 7 citations and parentheticals omitted).

8 In considering a motion to dismiss, a court must accept all of the plaintiff’s allegations as true  
 9 and construe them in the light most favorable to the plaintiff. *See id.* at 550; *Erickson v. Pardus*, 551  
 10 U.S. 89, 93-94 (2007); *Vasquez v. Los Angeles County*, 487 F.3d 1246, 1249 (9th Cir. 2007).  
 11 If the court dismisses the complaint, it should grant leave to amend even if no request to amend  
 12 is made “unless it determines that the pleading could not possibly be cured by the allegation of other  
 13 facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (quoting *Cook, Perkiss and Liehe, Inc.*  
 14 *v. Northern California Collection Serv. Inc.*, 911 F.2d 242, 247 (9th Cir. 1990)). But when a party  
 15 repeatedly fails to cure deficiencies, the court may order dismissal without leave to amend. *See*  
 16 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992) (affirming dismissal with prejudice where  
 17 district court had instructed *pro se* plaintiff regarding deficiencies in prior order dismissing claim  
 18 with leave to amend).

## 19 **II. DISCUSSION**

20 The Fund argues, in both its notice of removal and its motion to dismiss, that Mr. Giannini’s  
 21 claim is completely preempted by ERISA. The court agrees.

22 A state law claim may be subject to “complete preemption” or “conflict preemption” under  
 23 ERISA. If a state law claim is subject to complete preemption under the civil enforcement  
 24 provisions of ERISA § 502(a), it may be removed under 28 U.S.C. § 1441. *See* 28 U.S.C. § 1441  
 25 (defendant may remove case brought in state court if federal district courts have original  
 26 jurisdiction); 28 U.S.C. § 1331 (federal district courts have original jurisdiction over claims arising  
 27 under the Constitution, treaties, or laws of the United States); *Marin General Hosp., v. Modesto &*  
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1 *Empire Traction Co.*, 581 F.3d 941, 944-46 (9th Cir. 2009).<sup>4</sup>

2 If, however, a state claim is subject only to conflict preemption under ERISA § 514(a), ERISA  
3 provides only a federal defense. *See* 29 U.S.C. § 1144(a) (relevant provisions of ERISA shall  
4 supersede state law insofar as they relate to any non-exempt ERISA employee benefit plan); *Marin*  
5 *General Hosp.*, 581 F.3d at 949. What this means is that with conflict preemption, a state claim is  
6 not converted into an action “arising under federal law,” and removal is improper. *Metro. Life*  
7 *Ins. Co.*, 481 U.S. at 64; *see also Marin General Hosp.*, 581 F.3d at 945.

8 As the removing party, the Fund has the burden of proving that jurisdiction exists. That requires  
9 the Fund to demonstrate by a preponderance of the evidence that Mr. Giannini’s state law claims are  
10 subject to complete preemption under ERISA § 502(a). *See Sanchez v. Monumental Life Ins. Co.*,  
11 102 F.3d 398, 403-04 (9th Cir. 1996); *Nishimoto v. Federman-Bachrach & Assoc.*, 980 F.2d 709,  
12 712 n.3 (9th Cir. 1990). To do this, the Fund must prove that Mr. Giannini’s state law claims are  
13 encompassed in ERISA’s civil enforcement scheme set forth in ERISA § 502(a) by showing the  
14 following: (1) that Mr. Giannini at some point in time could have brought its claims under ERISA §  
15 502(a)(1)(B); and (2) there is no other independent legal duty implicated by the Fund’s denial of  
16 retirement benefits. *See Marin General Hosp.*, 518 F.3d at 946 (quoting test set forth in *Aetna*  
17 *Health Inc. v. Davila*, 542 U.S. 200, 210 (2004)).

18 The Fund has met its burden. As for the first prong of the *Davila* test, Mr. Giannini could have  
19 brought his claims under ERISA § 502(a)(1)(B). The Plan Administrator for the Fund, Mr. Price,  
20 stated that the Fund was established by, and is administered in accordance with, ERISA, and the  
21 Plan and its Summary Plan Description confirms this. (Price Decl., ¶ 3, ECF No. 17-1 at 2; *id.*, Ex.  
22 1, ECF No. 17-1 at 75, 94.) It is a covered plan. ERISA § 502(a)(1)(B) says that a civil action may  
23 be brought by a participant or beneficiary “to recover benefits due to him under the terms of his  
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26 <sup>4</sup> In cases removed from state court, federal jurisdiction ordinarily must appear on the face of  
27 the well-pleaded complaint at the time of removal. *See Libhart v. Santa Monica Dairy Co.*, 592 F.2d  
28 1062, 1065 (9th Cir. 1979). Complete preemption under ERISA is an exception to this rule in that  
federal law displaces a plaintiff’s state law claim, no matter how carefully pleaded. *See Metro. Life*  
*Ins. Co. v. Taylor*, 481 U.S. 58, 63-64 (1987); *Gregory v. SCIE, LLC*, 317 F.3d 1050, 1052 (9th Cir.  
2003).

1 plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under  
 2 the terms of the plan.” Mr. Giannini filed this action to recover the \$17,500 that he believes he is  
 3 owed under his ERISA-covered pension plan. Thus, he could have brought his claims under ERISA  
 4 § 502(a)(1)(B).

5 The second prong of the *Davila* test is met “where there is no other independent legal duty  
 6 that is implicated by a defendant’s actions.” *Davila*, 542 U.S. at 210. State law legal duties are not  
 7 independent of ERISA where “interpretation of the terms of [the] benefit plan forms an essential  
 8 part” of the claim, and legal liability can exist “only because of [the] administration of  
 9 ERISA-regulated benefit plans.” *Id.* at 211. Here, the basis of Mr. Giannini’s claims is that the Plan  
 10 did not properly administer the Plan (i.e., it breached its obligations under the Plan), and he alleges  
 11 no other independent legal duty violated by the Plan. The court also cannot discern one.  
 12 Accordingly, the court finds that the second prong of the *Davila* test also is satisfied.

13 Because both *Davila* prongs are satisfied, the court finds that Mr. Giannini’s breach of contract  
 14 claim and “failure to notify” claim are completely preempted by ERISA and thus must be dismissed  
 15 with prejudice. *See Guenther v. Lockheed Martin Corp.*, No. 5:11-CV-00380-EJD, 2012 WL  
 16 1155647, at \*3 (N.D. Cal. Mar. 30, 2012) (dismissing with prejudice plaintiff’s preempted breach of  
 17 contract claim).<sup>5</sup>

### 18 CONCLUSION

19 Based on the foregoing, the court grants the Fund’s motion and dismisses with prejudice Mr.  
 20 Giannini’s breach of contract claim and his “failure to notify” claim with prejudice. However,  
 21 because it is not clear whether it would be futile to allow Mr. Giannini to allege a claim against the  
 22 Fund under ERISA § 502(a)(1)(B), the court dismisses without prejudice Mr. Giannini’s complaint.  
 23 *See Pizza v. Fin. Indus. Reg. Auth., Inc.*, No. C-13-0688 MMC, 2013 WL 1891405, at \*4 (N.D. Cal.  
 24 May 6, 2013) (dismissing complaint without prejudice where it was not clear whether an amendment  
 25 to allege ERISA claims necessarily would be futile); *Puccio v. Standard Ins. Co.*, No.  
 26 12-cv-04640-JST, 2013 WL 1411155, at \*6 (N.D. Cal. Apr. 8, 2013) (dismissing plaintiff’s

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 28 <sup>5</sup> Because the court finds Mr. Giannini’s claims to be completely preempted under ERISA,  
 the court also discharges its order to show cause.

1 preempted defamation claim with prejudice but allowing plaintiff leave to amend to add a claim  
2 under ERISA).

3 Accordingly, Mr. Giannini may file a First Amended Complaint that alleges a claim under  
4 ERISA § 502(a)(1)(B) by February 27, 2015. Because he is proceeding pro se, the court reminds  
5 Mr. Giannini that the court previously provided him with a copy of the district court's *Handbook for*  
6 *Litigants Without a Lawyer*. (See 12/24/2014 Order (*Handbook* attached).) It provides instructions  
7 on how to proceed at every stage of a case, including discovery, motions, and trial. It may be  
8 download a copy at <http://www.cand.uscourts.gov>.

9 The court also informs Mr. Giannini that he may wish to seek assistance from the Legal Help  
10 Center, a free service of the Volunteer Legal Services Program, by calling 415-782-8982, or by  
11 signing up for an appointment on the 15th Floor of the Federal Courthouse in San Francisco, 450  
12 Golden Gate Avenue, San Francisco, California. At the Legal Help Center, pro se litigants are able  
13 to speak with an attorney who may be able to provide basic legal help but not representation.

14 **IT IS SO ORDERED.**

15 Dated: February 5, 2014



16 LAUREL BEELER  
17 United States Magistrate Judge  
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